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10 JOBY, INC.

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION
15

16 JOBY, INC.,

17 Plaintiff,

18 v.

19 TOCAD AMERICA, INC.,

20 Defendant.

Case No. 3:07-CV-06455 (SI)

**DECLARATION OF KEN MINN IN
SUPPORT OF JOBY, INC.'S MOTION
FOR A PRELIMINARY INJUNCTION**

Date: May 2, 2008
Time: 2:00 p.m.
Courtroom: 10, 19th Floor
The Honorable Susan Illston

21
22 I, Ken Minn, declare as follows:

23 1. I am responsible for business development and world wide operations at Joby, Inc.

24 I make this declaration based upon my personal knowledge, and if called upon to testify, could
25 and would testify competently to the matters set forth below.

26 2. I joined Joby, Inc. in January 2005 as the company's first employee with
27 responsibility for business development. In addition, I managed the product development,
28 production and marketing of the company's first product, a flexible camera tripod called the

1 “Gorillapod.” In early 2006, when the Gorillapod first launched, I assumed responsibility for
2 global sales for Joby, in addition to my business development responsibilities. Beginning in
3 2008, my business development responsibilities are specific to North America and Japan, and
4 others have responsibility for other geographies.

5 3. In October 2006, I first learned that Toca America, Inc. was planning to offer a
6 flexible camera tripod when one of our retailers advised us that a flexible tripod offered by Toca
7 under the name Sunpak FlexPod was listed in catalog put out by a distributor called DBL
8 Distributing. I checked Toca’s web site (www.toca.com), but there was no mention of the
9 product on the site at that time.

10 4. I did not see an actual FlexPod until I attended the Photo Plus Expo in New York
11 City in November 2006. Toca had a booth at the show and was displaying the FlexPod there. I
12 believe I was the first Joby employee to see Toca’s flexible tripod. The FlexPod I saw looked
13 almost exactly like Joby’s Gorillapod. I saw the FlexPod again at the Photo Marketing
14 Association trade show in Las Vegas in March 2007. Attached as Exhibit A is a photograph I
15 took of the FlexPod displayed at Toca’s booth at the Photo Marketing Association trade show in
16 March 2007. Attached as Exhibit B is another image of the FlexPod that shows the product in
17 more detail. Toca does not place its name or logo, the Sunpak name or logo, or the product’s
18 name anywhere on the FlexPod tripod.

19 5. On inspection, the FlexPod does not use the same materials, and does not have the
20 same smooth feel as the Gorillapod. In addition, I have observed that the rubber rings on the
21 Flexpod balls can crack and peel off of the plastic. In addition, in October, 2007, I took pictures
22 of a FlexPod that was being displayed by a retailer next to the Gorillapod. Attached as Exhibit C
23 are copies of those photographs, taken at B&H Photo-Video in New York. As can be seen from
24 the photographs, one of the legs of the FlexPod had broken off and was lying loose in the original
25 packaging.

26 6. In October 2007, I attended the Photo Plus Expo in New York City on behalf of
27 Joby. Toca also had a booth at the show. When I visited the Toca booth, I saw that they were
28 offering a new version of the FlexPod called the FlexPod Plus. I picked up a sample of it and

1 took it apart to see how it was made. I cut off the exterior plastic on one of the legs and saw that
2 the leg had a wire core. Attached as Exhibit D is a photograph showing the wire core of the
3 FlexPod Plus sample that I examined. Attached as Exhibit E is the image of the FlexPod Plus
4 that is currently displayed on Toca's web site. Toca does not place its name or logo, the
5 Sunpak name or logo, or the product's name anywhere on the FlexPod Plus tripod either.

6 7. In February 2008, I attended the Photo Marketing Association trade show in Las
7 Vegas. Toca had a booth at the show and was passing out a flyer describing the "FlexPods" they
8 offer. Attached as Exhibit F is a true and correct copy of the Toca flyer.

9 8. Toca displays its FlexPod and FlexPod Plus tripods at many of the same trade
10 shows Joby also attends, including the Consumer Electronics Show, the Photo Marketing
11 Association show, and the Photo Plus Expo. Toca also sells its tripods to many of the same
12 retailers Joby has, including Amazon.com, Best Buy, Adorama, B&H Photo-Video, Digital Foto
13 Club, Ace Photo & Digital, Focus Camera, Tristate Camera Video and Computers, and PRO
14 group.

15 9. I understand that in March 2008, a customer asked for permission to return a
16 flexible tripod to Joby because one of its legs had broken off. The customer reported that the
17 flexible tripod, which he apparently believed to be a Gorillapod, was purchased at Best Buy. This
18 incident was reported to me because I am responsible for business development regarding North
19 America retailers, including Best Buy. Joby's and Toca's tripods are the only flexible tripods
20 offered by Best Buy. The customer reported that the broken tripod had no name or logo on it.
21 Joby's products all have the Joby name on the quick release button.

22 10. I also understand that in February 2008 someone posted a video on the web site
23 www.windthefrog.net about a test performed with a "Joby Gorillapod" purchased from Fry's
24 Electronics. This was also reported to me because Fry's is one of the retailers in the North
25 America geography for which I am responsible. Joby does not sell Gorillapods to Fry's, but
26 Toca and two other manufacturers of Gorillapod knock-offs do. The two other knock-offs, like
27 the FlexPod and FlexPod Plus, look almost exactly the same as the Gorillapod.

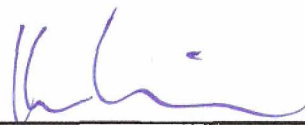
28 11. Like Joby's Gorillapod, when sold online the FlexPod and FlexPod Plus are

usually displayed without packaging. Attached as Exhibit G are pages from the web site www.amazon.com showing how the FlexPod and FlexPod Plus appear on that site. When sold in a store, the Tocad tripods are packaged in clear plastic that allows the purchaser a full view of the product.

12. Joby's original Gorillapod is priced at about \$25, the Gorillapod SLR at about \$45, and the Gorillapod SLR-Zoom at about \$55. Tocad's tripods are typically priced at approximately 20-40% less than Joby's Gorillapods.

13. It has been my experience that because the Tocad products look so much like the Gorillapod products, there is little motivation for retailers to stock both of them at the same time. For example, until Tocad's knockoffs came out, Joby was selling to one of the largest electronics retailers in the country. Once Tocad came out with its knock-off product, the combination of the fact that the Tocad product looked so much like the Gorillapod and the fact that Tocad had other product offerings with that retailer such as non-flexile tripods led the retailer to elect to sell the Tocad knockoffs instead. It is my belief that if Tocad is permitted to continue selling its knockoffs, it will make it very hard for Joby to compete for business in accounts such as this that are also interested in other Tocad products.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 27th day of March, 2008.



KEN MINN

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